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VIVIAN E. EADDY, Appellant)	
)	
and)	Docket No. 05-855
)	Issued: October 21, 2005
DEPARTMENT OF VETERANS AFFAIRS,)	
FINANCIAL SERVICE CENTER, Austin, TX,)	
Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

On March 1, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 13, 2004 and January 19, 2005 merit decisions denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 7, 2004 appellant, then a 46-year-old staff accountant, filed an occupational disease claim alleging that she sustained an emotional condition in the performance of duty.¹

In an undated statement received by the Office on February 2, 2004, appellant alleged that in May 1999 she requested a transfer to another work unit due to abuse from supervisors but her request was ignored. She claimed that she was verbally abused on numerous occasions by Almetta Moore, her supervisor. Appellant claimed that in April 1999 Ms. Moore “became aggressive and screamed” at her while they were discussing her interactions with other employees. Appellant alleged that after Ms. Moore ended the meeting, she followed appellant to her desk and screamed at her to “get my ass up” and then yelled “sit your ass down” after appellant stood up. Appellant claimed that Ms. Moore verbally abused her on November 15, 2001 when she received an unfair disciplinary letter regarding her leave usage. She claimed that during meetings Ms. Moore would “pick and pick” at whatever she said and would put words into her mouth and asserted that Ms. Moore unfairly criticized her writing and ordered her to make numerous unnecessary changes in documents. Appellant felt isolated at work, particularly after April 1999, when Ms. Moore commented that she should not become friends with a coworker, Jeanette Bushner-Hill. She alleged that Mary Rocha, a supervisor, tried to “destroy” her by ensuring that appellant was placed under Ms. Moore’s supervision beginning in January 2000. Appellant claimed that Ms. Rocha had promised her that she would not be placed under Ms. Moore’s supervision and that she was not given adequate opportunity to provide input concerning the matter.

Appellant further alleged that Ms. Rocha constantly picked at her regarding her work tasks and claimed that she unreasonably made her do things “over and over” including making minor changes in documents. She alleged that in November 2001 Ms. Rocha “blocked” her attempts to find other employment by lying about her abilities to other employers. Appellant asserted that on October 8, 2003 Ms. Rocha “started in on me with emails” which caused her to blackout. Appellant claimed that on November 12, 2003 Terry Riffel, a supervisor, unfairly denied her request for 26 hours of leave. In January 2002 Ms. Riffel had unreasonably denied her request to transfer from Ms. Moore’s supervision despite the fact that she had informed Ms. Riffel about Ms. Moore’s abuse. Appellant claimed that in January 2004 Katie Franceschini, a coworker, screamed at her while they were involved in the task of moving furniture. She asserted that Ms. Riffel told her that she was jealous of Ms. Franceschini and failed to address her concerns about the incident. Appellant alleged a notebook was placed on her desk in which Lydia Wheeler, a coworker, made notations concerning her that were intended to be seen by Ms. Moore. She claimed that other superiors, including Donald McLaughlin, Debbie Clark and Thomas Melville, ignored her requests for help concerning her immediate supervisors.

An undated statement of March 2004, contained similar allegations to those contained in appellant’s prior statement. She alleged that in April or May 2003 Ms. Moore stated to her,

¹ Appellant initially indicated that she sustained her claimed injury on October 8, 2003 but later asserted that she sustained it due to incidents which occurred over a period of time.

“You still here, they are out to get you,” and claimed that she learned from a coworker in April 2001 that Ms. Moore stated that she hated her and referred to appellant by making a vulgar comment about her breasts. Appellant alleged that Ms. Rocha embarrassed her on December 13, 1999 by distributing an email concerning training matters which was only meant to be sent to her. She claimed that on June 21, 2001 Ms. Moore made her compile a list of employees and that she later learned that the list already existed.

Appellant filed an Equal Employment Opportunity (EEO) complaint regarding some of these matters, but the record does not contain any document detailing the outcome of the complaint.

The record contains a December 6, 2001 statement in which Penny Walker asserted that when she worked in a cubicle next to appellant, she heard Ms. Moore yell at appellant. She also claimed that during a team meeting Ms. Moore treated appellant differently than other team members. Ms. Walker claimed that, along with Ms. Wheeler and Corrine Farabaugh, she heard Ms. Moore state that she hated appellant and referred to her by making a vulgar comment about her breasts.² She asserted that Ms. Moore was “loud, obnoxious and highly vindictive.” In a statement dated January 14, 2004, Ms. Wheeler asserted that both appellant and Ms. Moore raised their voices on occasion and indicated that it was well known that there were “problems” between the two. Ms. Wheeler alleged that appellant was “treated differently” and given assignments with very little information and asserted that Ms. Clark created a hostile and stressful work environment.

Appellant submitted a January 25, 2000 statement in which Alfred Orosco, a coworker, claimed that Ms. Rocha discriminated against her because she did not give her adequate information to perform her job, did not treat her as a team member and did not praise her for a job well done.

Appellant submitted medical reports detailing the treatment of her emotional condition, including those of Dr. Dan H. Roberts, an attending clinical psychologist, and Dr. Aida R. Coffey, an attending Board-certified psychiatrist.

The record contains a July 19, 2004 statement in which Ms. Riffel noted that she properly handled appellant’s leave requests and addressed her concerns about various work matters. In a statement dated July 27, 2004, Ms. Rocha claimed that she treated appellant the same as other employees and alleged that appellant acted “disruptive and threatening” towards her on several occasions. In a statement dated August 17, 2004, Ms. Moore asserted that she treated appellant fairly in all respects and indicated that appellant yelled at her on numerous occasions. She

² The record also contains an undated statement in which an anonymous person made similar claims regarding Ms. Moore’s comments.

denied making a vulgar comment about appellant and suggested that Ms. Walker made her statement to that effect because she had been disciplined regarding her leave usage.³

By decision dated August 13, 2004, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors.

Appellant requested a review of the written record by an Office hearing representative and submitted another statement, which reiterated the allegations contained in her prior statements.

By decision dated and finalized January 19, 2005, the Office hearing representative affirmed the Office's August 13, 2004 decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are

³ The record also contains statements from several upper-level superiors of appellant. In a January 26, 2004 letter, Mr. Melville asserted that appellant had been treated fairly with respect to assignments and promotions. He indicated that Ms. Moore was reprimanded in 2001 for using profanity in a meeting with other supervisors, but noted that this behavior stopped after she was reprimanded. In a statement dated August 3, 2004, Mr. McLaughlin asserted that management did all it could to resolve appellant's perceived problems with her supervisors.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁸ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁹

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that harassment and discrimination on the part of her supervisors and coworkers contributed to her claimed stress-related condition. She claimed that Ms. Moore, a supervisor, verbally abused her on numerous occasions and generally treated her different from other employees by picking at her work product. For example, appellant alleged that in April 1999 Ms. Moore screamed at her to "get my ass up" and then yelled "sit your ass down" after discussing a work-related matter with her. She claimed that Ms. Moore verbally abused her on November 15, 2001 when she received a disciplinary letter and that in April or May 2003 Ms. Moore stated to her, "You still here, they are out to get you." Appellant also asserted that she learned from a coworker in April 2001 that Ms. Moore stated that she hated her and referred to her by making a vulgar comment about her breasts.

Appellant further alleged that Ms. Rocha, a supervisor, constantly picked at her regarding her work tasks and claimed that she unreasonably made her do things "over and over." She asserted that in November 2001 Ms. Rocha "blocked" her attempts to find other employment by lying about her abilities to other employers and that on October 8, 2003 Ms. Rocha harassed her by barraging her with emails. Appellant claimed that in January 2004 Ms. Franceschini, a coworker, screamed at her while they were involved in the task of moving furniture and that a notebook was placed on her desk in which Ms. Wheeler, a coworker, made notations concerning her that were intended to be seen by Ms. Moore.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁰ However, for harassment or discrimination to give rise to a compensable disability under the Act,

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹¹

The record contains a December 6, 2001 statement of Ms. Walker, a coworker, which lends some support to appellant's claim that she learned from a coworker in April 2001 that Ms. Moore stated that she hated appellant and referred to her by making a vulgar comment about her breasts.¹² Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹³ Appellant has not shown how such an isolated comment made to another individual, even if established, would rise to the level of harassment or otherwise fall within the coverage of the Act.¹⁴

With respect to appellant's other allegations of harassment and discrimination, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹⁵ Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she did not provide sufficient corroborating evidence, such as probative witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁶ The record contains statements in which Ms. Walker and Mr. Orosco, another coworker, asserted that Ms. Moore committed harassment and discrimination against appellant.¹⁷ However, these statements are general in nature and lack sufficient specific information to establish the occurrence of harassment or discrimination. Appellant filed an EEO complaint regarding some of her allegations, but the record does not contain any document detailing the outcome of the complaint. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² Ms. Walker indicated that the comments were heard by other coworkers, Ms. Wheeler and Ms. Farabaugh, but the record does not contain any signed statements from these coworkers. Ms. Moore denied that she made the comments and suggested that Ms. Walker made her statement to that effect because she had been disciplined regarding her leave usage.

¹³ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

¹⁴ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

¹⁵ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁶ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁷ For example, Ms. Walker alleged that Ms. Moore yelled at appellant and treated her "differently" in meetings.

Appellant alleged that in May 1999, her request for a transfer to another work unit was improperly ignored, that beginning in January 2000 Ms. Rocha wrongly placed her under Ms. Moore's supervision and that in January 2002 Ms. Riffel unreasonably denied her request to transfer from Ms. Moore's supervision. She claimed that on November 15, 2001 Ms. Moore gave her an unfair disciplinary letter regarding her leave usage and that on November 12, 2003 Ms. Riffel unfairly denied her request for 26 hours of leave. Appellant generally alleged that she was not given adequate information regarding work tasks and that her work product was unreasonably scrutinized. She also alleged that in December 1999 Ms. Rocha improperly distributed an email that was only intended for her and that in June 2001 Ms. Moore gave her an unnecessary assignment.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave, improperly managed work assignments and unreasonably monitored her activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁸ Although the handling of disciplinary actions and leave requests, the management of work assignments and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁰

The Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. The employing establishment submitted statements in which it explained that it properly handled appellant's work assignments and requests for transfers and leave usage. Appellant did not submit evidence, such as the findings of grievances, which would show that the employing establishment acted improperly. She submitted statements in which Ms. Walker and Mr. Orosco generally indicated that she was not given adequate support to carry out work tasks. However, these statements lack specificity and therefore are of limited probative value on this matter. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and therefore has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²¹

¹⁸ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁹ *Id.*

²⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 19, 2005 and August 13, 2004 decisions are affirmed.

Issued: October 21, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board